



BEFORE SH. AMARDEEP, COMMISSIONER
(EMPLOYEE'S COMPENSATION ACT, 1923)
GOVT. OF NCT OF DELHI, LABOUR DEPARTMENT
(SHAHDARA & NORTH EAST DISTRICT)
VISHWAKARMA NAGAR, JHILMIL COLONY, DELHI-110095

No. F. CEC-D/ED/02-03/2020 244-46

Dated: 30.01.23

In the matter of: -

Sh. Sonu S/o Late Sh. Surender
(Brother of the deceased workman)
R/o H. No. 94, New Sanjay Amar Colony,
J.J. Camp, Shahdara, Delhi-110032
Through Delhi Dukan & Sansthan Kamgar Union(Regd.)
277, Pratapkhand, Vishwakarma Nagar, Delhi-110095

....Claimant

V/s

Through Executive Engineer (Civil)
M/s Delhi Development Authority
Office of the Executive Engineer
Eastern Maintenance Division -4 (Formerly ED-9)
Seed Bed Park Delhi-110092

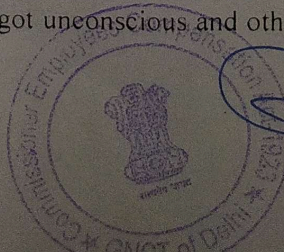
.. Respondent No.1

Sh. Anil Giri & Sh. Shanki (Contractor),
Through its Executive Engineer (Civil)
M/s Delhi Development Authority
Office of the Executive Engineer
Eastern Maintenance Division -4 (Formerly ED-9)
Seed Bed Park Delhi-110092

..Respondent No.2

ORDER

1. Vide this order, I shall dispose off the claim application dated 11.11.2020 under Employee's Compensation Act, 1923 (hereinafter referred as an "Act") wherein it is mentioned that respondent no.1 has given sewer cleaning contract to respondent no.2. On 02.02.2020 the deceased Sh. Ravi was appointed/employed by respondent no.2 at the site of respondent no.1 which is at CBD Ground, Shahdara, Delhi-110032. Sh. Anil Giri & Sh. Shanki, Respondent no.2 asked the Sh. Ravi and other employees to carry out the cleaning of main hole of sewer, which is near the BSES Office, CBD Ground. All the employees objected to enter into the sewer without mask, cylinder and ladder but the contractor did not pay any heed and stated that it is routine work and forced them to enter into sewer. When Late Sh. Ravi entered into sewer, he got unconscious and other employee namely Sh. Sanjay entered



into sewer to take out Sh. Ravi from the sewer but he also got unconscious. Thereafter, other employees called the police and Fire Brigade and they taken out Sh. Ravi and Sh. Sanja from the main hole of sewer and shifted them to Hedgewar Hospital where Sh. Ravi was declared dead. A FIR No.0049 dated 02.02.2020 got registered in P.S. Anand Vihar. It is also stated in the claim application that the deceased Sh. Ravi was not provided with the facilities under Labour Laws i.e. appointment letter, wages register, attendance register, Identity card of management, etc. The claimant also sent a demand notice dated 20.10.2020 to respondents through Union. The claimant has prayed that the accident took place on 02.02.2020 and at the time of accident, the age of deceased Sh. Ravi was 29 years according to which respondents are liable to pay compensation of Rs.15,74,400/- along with 12% interest and 50% penalty.

2. Summons were issued to the respondents. The respondent no.1 and 2 appeared but after some time both stopped appearing despite service of notice therefore they have proceeded ex-parte on 20.12.2021. The respondent no.2 filed an application for setting aside ex-parte order, same was considered and allowed. The respondent no.2 filed its written statement stating that present petition is not maintainable because the petitioner does not fall within the ambit of legal heir of the alleged deceased person, therefore, the application is liable to dismiss at threshold. That there is no employer-employee relationship. That the respondent neither took any contract for work related to alleged cleaning of sewer nor ever doing any alleged work nor any work order was/is received from DDA or any other private or Govt. authorities either on any date or month or year for any period. The respondent no.1 also filed written statement stating that the present claim is not maintainable as the claimant is not entitled to file any claim petition, as he has no locus standi, as per the definition of the term "dependant" under the Employees Compensation Act. That the claimant has concealed the material fact from this Hon'ble Court as to his illegibility to file the claim petition. As per Section 2 (d)(iii)(d) of the Act defines the dependant person as the minor brother of the deceased employee and in the entire petition the claimant has not mentioned the fact that he was a minor brother to the deceased employee at the time of filing the claim. As per the Aadhar Card, the date of his birth reflects as 1992. He had already taken Rs.2,00,000/- from the respondent no.1 on the humanity grounds. Further, no contract was given to any contractor by the respondent no.1 for cleaning the sewer line in CBD Shahdara which is otherwise in illegal possession of Shahdara Bar Association. The claimant is not dependant as per Section 2 (d)(iii)(d) of the Act, therefore the claim should be dismissed.
3. The respondent has argued that the claimant is elder brother of the deceased workman and he is a major, he does not fall under the definition of the dependant therefore, the claim is not maintainable. He has relied on the judgement of Hon'ble High Court of Madras in the matter of B.M. Habeebullah Maricar Vs Peria Swami & Ors. AIR 1997 MAD 330, (1997) IILLJ 322 MAD. They also relied on the judgement of Hon'ble High Court of Rajasthan in the matter of Gopal Synthetic Vs Workman Compensation 1995 ACJ 908, 1995 (70) FLR72, (1996) IILLJ 1155 RAJ, 1994 (1) WLC 646. The claimant has relied on Hindu Succession Act and has stated that claimant being legal heir is entitled to file claim and receive the compensation.



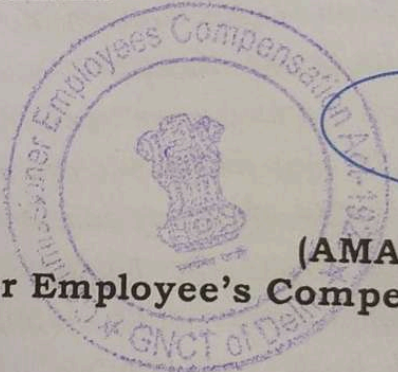
4. The arguments of both the parties have been heard. The claim for compensation has been filed under the Employees Compensation Act, 1923. The reliance placed by the claimant on Hindu Succession Act for claiming compensation is not applicable in this case as the Employees Compensation Act, 1923 is a comprehensive piece of legislation and deals with all the aspects.

5. The compensation payable under the Act can be claimed only by the injured workman or in case of his death by the dependants and not by any other person. Section 9 of the Act reads as- "*Compensation not to be assigned, attached or charged- Save as provided by this Act no lump sum or half-monthly payment payable under this Act shall in any way be capable of being assigned or charged or be liable to attachment or pass to any person other than the *[employee] by operation of law nor shall any claim be set off against the same.*" Section 9 provides that the compensation cannot be assigned or attached or pass to any person other than the employee. Further, the word employee has been defined in Section 2 (dd)(III) wherein it is stated- *where the employee is dead, include a reference to his dependents or any of them.* Section 8 (4) of the Act provides that- "*On the deposit of any money under sub-section (1), as compensation in respect of a deceased *[employee] the Commissioner shall, if he thinks necessary, cause notice to be published or to be served on each dependant in such manner as he thinks fit, calling upon the dependants to appear before him on such date as he may fix for determining the distribution of the compensation. If the Commissioner is satisfied after any inquiry which he may deem necessary, that no dependant exists, he shall repay the balance of the money to the employer by whom it was paid. The Commissioner shall, on application by the employer, furnish a statement showing in detail all disbursements made.*" In Section 8 of the Act, it is clearly stated that if there are no dependants then the money deposited shall be repaid to the Employer who has deposited. The dependant has been defined under Section 2 (1)(d)- "*dependant" means any of the following relatives of deceased *[employee], namely:--*

- (i) a widow, a minor legitimate or adopted son, an unmarried legitimate or adopted daughter or a widowed mother; and
- (ii) if wholly dependant on the earnings of the *[employee] at the time of his death, a son or a daughter who has attained the age of 18 years and who is infirm;
- (iii) if wholly or in part dependant on the earnings of the *[employee] at the time of his death,--
 - (a) a widower,
 - (b) a parent other than a widowed mother,
 - (c) a minor illegitimate son, an unmarried illegitimate daughter or a daughter legitimate or illegitimate or adopted if married and a minor or if widowed and a minor,
 - (d) a minor brother or an unmarried sister or a widowed sister if a minor,
 - (e) a widowed daughter-in-law,
 - (f) a minor child of a pre-deceased son,
 - (g) a minor child of a pre-deceased daughter where no parent of the child is alive, or
 - (h) a paternal grandparent if no parent of the *[employee] is alive; Explanation.--For the purposes of sub-clause (ii) and items (f) and (g) of sub-clause (iii), references to a son, daughter or child include an adopted son, daughter or child respectively.

6. The combined reading of Section 2 (dd)(III), Section 9 and Section 8(4) makes it amply clear that compensation can be claimed by workman himself in case he survives the injury and in case of his death by his dependants and not by any other person. The Hon'ble High Court of Madras in the matter of B.M. Habeebullah Maricar Vs Peria Swami & Ors. AIR 1997 MAD 330, (1997) IILLJ 322 MAD and Hon'ble High Court of Rajasthan in the matter of Gopal Synthetic Vs Workman Compensation 1995 ACJ 908, 1995 (70) FLR72, (1996) IILLJ 1155 RAJ, 1994 (1) WLC 646 have held that the compensation under Employees Compensation Act can be claimed only by the claimant himself in case of injury and in case of his death by his dependants and not by any other person.
7. In the present case, claimant Sh. Sonu is elder brother of deceased workman and he is a major. He does not fall under the category of dependants as defined under Section 2(1)(d) therefore, he is not entitled to claim compensation under Employees Compensation Act, hence the claim filed by him is not maintainable. The claim is dismissed accordingly.

Given under my seal and signature on 27th Day of January, 2023.


(AMARDEEP)
Commissioner Employee's Compensation